

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

File No: 1:06-CR-264

v.

HON. ROBERT HOLMES BELL

TERRY BERNARD MICHAEL,

Defendant.

OPINION AND ORDER

Defendant has filed a request seeking the preparation of the trial transcript purportedly in anticipation of filing a 28 U.S.C. §2255 motion (docket #62).

28 U.S.C. §753(f) governs the provision of free transcripts to federal prisoners filing petitions under section 2255. Section 753(f) provides, in pertinent part:

Fees for transcripts furnished in proceedings brought under section 2255 of this title to persons permitted to sue or appeal in forma pauperis shall be paid by the United States out of money appropriated for that purpose if the trial judge or a circuit judge certifies that the suit or appeal is not frivolous and that the transcript is needed to decide the issue presented by the suit or appeal.

28 U.S.C. §753(f).

In United States v. MacCollom, 426 U.S. 317 (1976), the Supreme Court construed this statute as requiring a criminal defendant to file a nonfrivolous section 2255 motion as a prerequisite to the ability to seek a free transcript. The MacCollom case held that a federal prisoner has no statutory or constitutional right to a free transcript for use in preparing a section 2255 motion. 426 U.S. at 320-23. This holding was in accordance with previous decisions of the Sixth Circuit Court of Appeals. See Lucas v. United States, 423 F.2d 683, 684 (6th Cir. 1970) (in general, indigents do not have a right to a free transcript to frame a motion under section 2255); Smith v. United States, 421 F.2d 1300 (6th Cir. 1970).

As a result of the MacCollom decision, any request for a free transcript prior to the filing of

a section 2255 motion is premature. United States v. Alcorn, 10 F. App'x 248, 249 (6th Cir. 2001); United States v. Losing, 601 F.2d 351, 352 (8th Cir. 1979). Defendant must first file a section 2255 motion. If the court determines that the motion is not frivolous, a request for a free transcript under section 753(f) would be in order. See Groseclose v. McWilliams, No. 89-6536, 1991 WL 170901 (6th Cir. Sept. 5, 1991). Until defendant files a nonfrivolous section 2255 motion, his request for a free transcript (docket #62) is premature and must be **DENIED**.

Dated: March 1, 2010

/s/ Robert Holmes Bell
ROBERT HOLMES BELL
UNITED STATES DISTRICT JUDGE